

United States Courts
Judicial Council of the Eighth Circuit
Thomas F. Eagleton United States Courthouse
111 South 10th Street - Suite 26.325
St. Louis, Missouri 63102-1116

Millie B. Adams
Circuit Executive

Voice (314) 244-2600
Fax (314) 244-2605
www.ca8.uscourts.gov

EIGHTH CIRCUIT JUDICIAL COUNCIL

O R D E R

I hereby certify that the Eighth Circuit Judicial Council has approved the amendments to the Local Rules of the United States Bankruptcy Appellate Panel for the Eighth Circuit.



Millie B. Adams
Circuit Executive

St. Louis, Missouri
February 8, 2006

cc: Judicial Council Members
Bankruptcy Appellate Panel Members
Michael E. Gans, Clerk of Court
Administrative Office

Approval was given by the Rules and Bankruptcy Committees.

JCO 1805

Local Rule 8001B. Certification to Court of Appeals

(1) *Timely Appeal Required.* A certification of a judgment, order, or decree of a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2) shall not be treated as a certification entered on the docket within the meaning of § 1233(b)(4)(A) of Public Law No. 109-8 until a timely appeal has been taken in the manner required by subdivisions (a) or (b) of this rule and the notice of appeal has become effective under Rule 8002.

(2) *Court Where Made.* A certification that a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists shall be filed in the court in which a matter is pending for purposes of 28 U.S.C. § 158(d)(2) and this rule. A matter is pending in a bankruptcy court until the docketing of the appeal of a final judgment, order, or decree in accordance with Rule 8007(b) or the grant of leave to appeal an interlocutory judgment, order, or decree under 28 U.S.C. § 158(a). A matter is pending in a district court or bankruptcy appellate panel after an appeal of an interlocutory judgment, order, or decree has been docketed in accordance with Rule 8007(b) or leave to appeal has been granted under 28 U.S.C. § 158(a).

(A) *Certification by Court on Request or Court's Own Initiative.*

(i) *Before Docketing or Grant of Leave to Appeal.* Only a bankruptcy court may make a certification on request or on its own initiative while the matter is pending in the bankruptcy court.

(ii) *After Docketing or Grant of Leave to Appeal.* Only the district court or bankruptcy appellate panel involved may make a certification on request of the parties or on its own initiative while the matter is pending in the district court or bankruptcy appellate panel.

(B) *Certification by All Appellants and Appellees Acting Jointly.* A certification by all the appellants and appellees, if any, acting jointly may be made by filing the appropriate Official Form with the clerk of the court in which the matter is pending. The certification may be accompanied by a short statement of the basis for the certification, which may include the information listed in subdivision (f)(3)(C) of this rule.

(3) *Request for Certification; Filing; Service; Contents.*

(A) A request for certification shall be filed, within the time specified by 28 U.S.C. § 158(d)(2), with the clerk of the court in which the matter is pending.

(B) Notice of the filing of a request for certification shall be served in the manner required for service of a notice of appeal under Rule 8004.

(C) A request for certification shall include the following:

(i) the facts necessary to understand the question presented;

(ii) the question itself;

(iii) the relief sought;

(iv) the reasons why the appeal should be allowed and is authorized by statute or rule, including why a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists; and

(v) an attached copy of the judgment, order, or decree complained of and any related opinion or memorandum.

(D) A party may file a response to a request for certification or a cross-request within 10 days after the notice of the request is served, or another time fixed by the court.

(E) The request, cross request, and any response shall not be governed by

Rule 9014 and shall be submitted without oral argument unless the court otherwise directs.

(F) A certification of an appeal under 28 U.S.C. § 158(d)(2) shall be made in a separate document served on the parties.

(4) *Certification on Court's Own Initiative.*

(A) A certification of an appeal on the court's own initiative under 28 U.S.C. § 158(d)(2) shall be made in a separate document served on the parties in the manner required for service of a notice of appeal under Rule 8004. The certification shall be accompanied by an opinion or memorandum that contains the information required by subdivision (f)(3)(C)(i)-(iv) of this rule.

(B) A party may file a supplementary short statement of the basis for certification within 10 days after the certification.

Local Rule 8003A. Leave to Appeal

If leave to appeal is required by 28 U.S.C. § 158(a) and has not earlier been granted, the authorization of a direct appeal by a court of appeals under 28 U.S.C. § 158(d)(2) shall be deemed to satisfy the requirement for leave to appeal.

LOCAL RULE 8007A.

(d) Docketing the Appeal. Upon receipt of the preliminary record, the clerk of the bankruptcy appellate panel shall docket the appeal and establish a schedule for the designation of the record, the completion of the transcript and the filing of briefs. *For the purpose of determining where to file a certification under Local Rule 8001B, and for no other purpose, the appeal is deemed to be docketed 30 days after the date the notice of appeal was filed.* The clerk shall notify all parties to the appeal and the clerk of the bankruptcy court that the matter has been docketed and a briefing schedule established. At the time of the docketing the clerk shall assign the case a unique, permanent bankruptcy appellate panel case number.

[Caption as described in Fed. R. Bankr. P. 7010 or 9004(b), as applicable.]

**CERTIFICATION TO COURT OF APPEALS
BY ALL PARTIES**

A notice of appeal having been filed in the above-styled matter on _____[Date], _____, _____, and _____, [Names of all the appellants and all the appellees, if any], who are all the appellants [and all the appellees] hereby certify to the court under 28 U.S.C. § 158(d)(2)(A) that a circumstance specified in 28 U.S.C. § 158(d)(2) exists as stated below.

Leave to appeal in this matter [] is [] is not required under 28 U.S.C. § 158(a).

[If from a final judgment, order, or decree] This certification arises in an appeal from a final judgment, order, or decree of the United States Bankruptcy Court for the _____ District of _____ entered on _____[Date].

[If from an interlocutory order or decree] This certification arises in an appeal from an interlocutory order or decree, and the parties hereby request leave to appeal as required by 28 U.S.C. § 158(a).

[The certification shall contain one or more of the following statements, as is appropriate to the circumstances.]

The judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for this circuit or of the Supreme Court of the United States, or involves a matter of public importance.

Or

The judgment, order, or decree involves a question of law requiring resolution of conflicting decisions.

Or

An immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken.

[The parties may include or attach the information specified in Rule 8001(f)(3)(C).]

Signed: *[If there are more than two signatories, all must sign and provide the information requested below. Attach additional signed sheets if needed.]*

Attorney for Appellant (or Appellant,
if not represented by an attorney)

Printed Name of Signer

Address

Telephone No.

Date

Attorney for Appellant (or Appellant
if not represented by an attorney)

Printed Name of Signer

Address

Telephone No.

Date